Yun Hing (Sabah) Sdn Bhd v Sandakan Plywood & Veneers Co Sdn Bhd

HIGH COURT (SANDAKAN) — SUIT NO S178 OF 1986
IAN CHIN J
24 OCTOBER 1994

Civil Procedure *— Execution — Stay — Application for stay pending outcome of defendant's appeal — Whether merits of appeal to be taken into account when determining special circumstances*

This was an application by the defendants for a stay of execution as a result of the striking out without trial of the defendants' counterclaim against the plaintiffs. The defendants appealed to the Court of Appeal against the striking out. The plaintiffs had earlier obtained judgment for a sum of about RM1.7m but the court ordered that 'the execution of the said judgment be stayed pending the trial of the defendants' counterclaim'. In applying for the stay, the defendants sought to establish special circumstances that warranted a stay. The defendants submitted that being an ongoing concern, its business would be greatly jeopardized and irreparably damaged by execution proceedings before the hearing of the appeal. Further, the defendants' counterclaim far exceeded the judgment debt. The key issue for the court to decide was whether the merit of an appeal is a relevant consideration in determining whether special circumstances exist for a stay of execution to be granted.

Held, allowing the defendants' application:

(1) The merit of an appeal, though on its own may not be sufficient to constitute special circumstances, may be taken into consideration with other factors for the purpose of determining whether there are special circumstances. If the merit of an appeal were not a relevant consideration, a party may be successful in establishing special circumstances and thus obtain a stay when its appeal is devoid of merit, a result which is surely undesirable.

(2) The defendants have failed to adduce enough evidence to show how execution proceedings would jeopardize its business and cause it irreparable damage. Therefore, a case had not been made out that its operations would be disrupted if execution were not stayed.

(3) However, counsel for the plaintiffs did not dispute the defendants' submission that its counterclaim far exceeded the judgment debt. Neither did he argue that the defendants' appeal had no merits. The court thus assumed that he had conceded both these points. Since there was merit in the appeal and the counterclaim far exceeded the judgment debt and was struck out without a trial, the court ordered that the execution of the judgment be stayed until after the hearing of the appeal against the decision striking out the counterclaim.

Obiter:

This application may not have been necessary as the parties had proceeded on the basis that the stay was automatically lifted after the counterclaim was dismissed and had thus equated the proceedings relating to the striking out for want of prosecution to that of a trial. It could be argued that the appeal constitutes a continuing process of the 'trial' and before the appeal is dismissed, the 'trial' is not over and therefore the stay granted should continue.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh defendan untuk penggantungan pelaksanaan berikutan daripada pembatalan tanpa perbicaraan tuntutan balasnya terhadap plaintif. Defendan merayu kepada Mahkamah Rayuan terhadap pembatalan itu. Plaintif terlebih awal telah memperolehi penghakiman untuk sejumlah kira-kira RM1.7 juta tetapi mahkamah telah memerintahkan bahawa 'pelaksanaan penghakiman itu digantung sementara menantikan perbicaraan tuntutan balas defendan'. Ketika memohon untuk penggantungan itu, defendan berusaha mendirikan keadaan-keadaan khas yang mewajarkan pemberian satu penggantungan. Defendan menghujah bahawa memandangkan yang ia adalah satu perniagaan yang berterusan, perniagaannya akan diancam dengan serius dan dirosakkan sehingga tidak boleh dibaiki oleh prosiding pelaksanaan sebelum pendengaran rayuan itu. Lagipun, tuntutan balas defendan itu jauh melebihi hutang penghakiman. Isu penting untuk diputuskan oleh mahkamah ialah sama ada merit sesuatu rayuan itu menjadi satu pertimbangan yang relevan dalam menentukan sama ada terdapat keadaan-keadaan khas untuk suatu penggantungan pelaksanaan dibenarkan.

Diputuskan, membenarkan permohonan defendan itu:

(1) Merit sesuatu rayuan itu, walaupun secara sendirinya mungkin tidak mencukupi untuk membentuk keadaan-keadaan khas, boleh diambil kira bersama-sama dengan faktor-faktor lain untuk tujuan menentukan sama ada terdapat keadaan-keadaan khas. Jika merit sesuatu rayuan itu bukan satu pertimbangan yang relevan, sesuatu pihak itu mungkin berjaya mendirikan keadaan-keadaan khas dan lantaran itu mendapat satu penggantungan walhal rayuannya itu tidak mempunyai merit, satu keputusan yang tentunya tidak dimahukan.

(2) Defendan telah gagal mengemukakan keterangan yang mencukupi untuk menunjukkan bagaimana prosiding pelaksanaan akan mengancam perniagaannya dan mengakibatkan kerosakan yang tidak boleh dibaiki. Oleh itu, satu kes yang menunjukkan bahawa operasinya akan diganggu jika pelaksanaan tidak digantung tidak dibuktikan.

(3) Bagaimanapun, peguambela plaintif tidak mempertikaikan hujah defendan bahawa tuntutan balasnya jauh melebihi hutang

penghakiman. Beliau juga tidak menghujah bahawa rayuan defendan itu tidak mempunyai merit. Oleh itu, mahkamah membuat anggapan bahawa beliau telah mengaku kepada kedua-dua hujah itu. Oleh kerana terdapat merit dalam rayuan itu dan tuntutan balas jauh melebihi hutang penghakiman dan ianya dibatalkan tanpa perbicaraan, mahkamah memerintahkan supaya pelaksanaan penghakiman itu digantung sehingga selepas pendengaran rayuan terhadap keputusan membuang tuntutan balas itu.

Obiter:

Permohonan ini mungkin tidak perlu dibuat kerana pihak-pihak telah terus bertindak atas dasar bahawa penggantungan itu telah ditarik balik secara automatik selepas tuntutan balas itu ditolak dan dengan itu telah menyamakan prosiding pembatalan dengan suatu perbicaraan. Boleh dihujahkan bahawa rayuan itu merupakan suatu proses 'perbicaraan' yang berterusan dan sebelum rayuan itu ditolak, 'perbicaraan' itu belum selesai dan dengan demikian penggantungan yang diberikan itu seharusnya diteruskan.]

Notes

For cases on stay of execution, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1359–1383.

Cases referred to

Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd [1989] 3 MLJ 40 (not folld)

Government of Malaysia v Datuk Hj Kadir Mobamad Mastan and another application [1993] 3 MLJ 514 (refd)

Hong Leong Finance Bhd v Hon Hoi Weng & Ors [1987] 2 MLJ 377 (refd)

Kong Thai Sawmill (Miri) Sdn Bhd, Re [1976] 1 MLJ 131 (refd)

Lee Kuan Yew v Jeyaretnam JB [1991] 1 MLJ 83 (refd)

Monk v Bartram [1891] 1 QB 346 (distd)

Serangoon Garden Estate Ltd v Ang Keng [1953] 1 MLJ 116 (folld)

Sykt Berpakat v Lim Kai Kok [1983] 1 MLJ 406 (not folld)

Legislation referred to

Rules of the High Court 1980 O 47 r 1

CC Liew (*CC Liew & Co*) for the plaintiffs.

Raymond Szetu (*Chan Wai Ling* with him) (*Nicholas Fung Tokuzip & Co*) for the defendants.

Cur Adv Vult

Ian Chin J: This is an application by Sandakan Plywood & Veneers Co Sdn Bhd ('the defendants') for a stay of execution as a result of the striking out by John Chong J on 30 July 1994 of the counterclaim of the defendants.

A little of the history of the suit herein has to be narrated to put into perspective the issues that call for determination.

History of case

The plaintiff took out the writ herein against the defendants claiming for fees due for the extraction and transportation of timber. Judgment for the plaintiff was, on 11 June 1987, ordered to be entered against the defendants, upon their admission, for the sum of RM1,718,731.65 together with costs and interest but the order giving judgment further states that 'the execution of the said judgment be stayed pending the trial of the defendant's counterclaim'. There was also an application of the plaintiffs to strike out the counterclaim which was dismissed. One of the allegations of the counterclaim was that the plaintiffs were in breach of the agreement (under which the plaintiffs were owed the said sum for which judgment was ordered to be entered) by failing to submit to the defendants monthly reports of all timber logs extracted giving the quantity, species and volume of the logs that were extracted by the plaintiffs. The defendant had contracted to extract and transport the timber logs with a concession owner and the defendants had in turn sub-contracted the works to the plaintiffs for which the said sum was owed. The gist of the counterclaim was that the plaintiffs had failed to comply with the terms of the sub-contract agreement when the plaintiffs failed to submit monthly reports of the quantity, species and volume of timber extracted and that the plaintiffs, after terminating the said sub-contract agreement, remained on the land concerned and continued to extract and remove timber and dealt direct with the concession owner for their payment. The defendants counterclaimed 'the amount of the difference of the agreed prices of timber logs extracted to be paid by SFI [Sabah Forest Industries] to the defendants under the principal agreement and the agreed prices of timber logs extracted to be paid by the defendants to the plaintiffs under the sub-contract agreement from August 1985 until judgment'. The fees payable for the extraction and transportation of timber by the defendants to the plaintiffs were:

(a) small logs and logs of grade above — RM70 per cubic metre; and

(b) low grades — RM44 per cubic metre.

As against this, the fee payable by the concession owner to the defendants was RM73.50 per cubic metre for all commercial timber. It is this difference in the contract fees that the defendants counterclaimed against the plaintiffs. As for the rest of the history, I can do no better than to reproduce what was stated by John Chong J in his judgment of 30 July 1994, viz:

> Thus, from 11 June 1987, the action proceeded only as respects the defendants' counterclaim, and under O 25 r 1(1) read together with r 1(6), the defendants, as the party making the counterclaim, were required to take out a summons for directions within one month after the close of the pleadings, but they failed to do so. What followed next appears from the case docket is that on 3 April 1989, the plaintiffs, as the defendants to the counterclaim, took out a summons for directions, and this the plaintiffs were entitled to do under r 1(5). The summons for directions was fixed for

A hearing before the senior assistant registrar on 10 October 1989 but it was adjourned upon intimation from counsel for the plaintiffs that the sealed copy of the summons had not been returned by the High Court registry to them for service on the defendants. It came up for hearing next on 25 June 1990, but was adjourned to 26 July 1990 and upon the application of the plaintiffs' counsel made orally in the absence of defendants' counsel, the B senior assistant registrar struck out the summons for directions. On 18 August 1992, the plaintiffs took out a summons seeking an order to dismiss the defendants' counterclaim for want of prosecution on account of failure on the part of the defendants to take out a summons for directions in respect of their counterclaim and/or to strike it out on the ground that it disclosed no reasonable cause of action. This summons came before me on C 9 December 1992 but was adjourned to 5 February 1993 for argument. In the meantime, the defendants filed in a summons-in-chambers on 11 December 1992, applying for leave to amend their defence and counterclaim. It came before me on 26 January 1993 when, with the agreement of the parties, it was adjourned to be dealt with on 5 February 1993 at the hearing of the plaintiffs' application for dismissal of the D defendants' counterclaim ...

The defendants' counterclaim was dismissed and against which decision there is now an appeal pending in the Court of Appeal. In the meantime, the defendants had asked the court to stay execution of the judgment which the plaintiffs had obtained against the defendants. It will be recalled E that the learned judge who entered summary judgment for the plaintiffs had ordered a stay of execution 'pending trial of the defendant's counterclaim'. The parties had proceeded on the basis that the stay is automatically lifted after the counterclaim had been dismissed for want of prosecution and had thus equated the proceedings relating to the striking out for want of prosecution to that of a trial. If a summary dismissal is F regarded as 'a trial' within the meaning of the order of stay, what then of the position of the appeal against the dismissal of the action. It could possibly be argued that the appeal constitutes a continuing process of the 'trial' and thus, before the appeal is dismissed, the 'trial' is not over and therefore the stay granted should continue. This application may not thus G be necessary. This was not the argument advanced but the defendants had relied on 'special circumstances' for a stay. It is to that aspect of the argument that I will now turn to.

Grounds for stay of execution

H The first of the affidavits filed in support of the application for a stay was sworn to on 13 September 1994 by Chan Wai Ling, an advocate of the firm of advocates acting for the defendants and she said:

> 9 The defendants [are] an ongoing concern and [are] actively involved in business. Any execution proceedings against them before the hearing of I appeal will greatly jeopardized their businesses and cause irreparable damage which cannot be compensated by costs.

The rest of her affidavit is of no consequence. This was supplemented by an affidavit sworn to on 10 October 1994 by Dato' Dr Lee Song Kui, a director of the defendants, the relevant paragraphs of which read:

3 ... the defendants are operating a veneers, corestock and plywood factory at Jalan Batu Sapi, Mile 6, Sandakan jointly with Sandakan Blockboard Manufacturing Sdn Bhd.

4 Any execution proceedings levied against the defendants will not only [disrupt] the business of the defendants but also that of its joint venture company.

5 The defendants and Sandakan Blockboard Manufacturing Sdn Bhd are interdependent [on] each other and together they employ over 600 workers. These workers will become jobless if the operation of the factory is brought to a standstill.

6 I am advised and verily believe that the defendants have a plausible counterclaim against the plaintiffs. It is a fact that the plaintiffs continue to extract timber from the coupe area known as 'Coupe 85' released to the defendants even after the purported termination knowing at all material times that the coupe area was already released to the defendants as indicated in a letter from Sandakan Forest Industries Sdn Bhd (hereinafter referred to as 'SFI') dated 6 March 1985. The map showing the Coupe 85 area is contained in the defendants' letter dated 31 January 1985 to SFI ...

7 As from August 1985, the plaintiffs have stopped submitting to the defendants the monthly report on volume production even though they have continue to extract timber from Coupe 85 and other areas which were contracted to the defendants under special licence No 6/83 (hereinafter referred to as 'the said area') by SFI on 9 August 1983. The plaintiffs have knowledge of the aforesaid contract ...

8 By reason of the aforesaid, the defendants counterclaim against the plaintiffs for the sum of RM1,457,350.35 the particulars of which are as follows:

Estimated monthly volume of production by the plaintiffs in defendants' area:	720,000cu ft
Difference in contract price:	0.126 cents per cu ft
Balance owing to the defendants: (From August 1985—July 1988)	3,176,082.00
Less	1,718,731.65
	1,457,350.35

The law

The present application for a stay is grounded on O 47 r 1 of the Rules of the High Court 1980 which says:

(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution —

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable from any cause to pay the money,

A then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of seizure and sale either absolutely or for such period and subject to such condition as the Court thinks fit.

The only dispute regarding the legal principle is as regards whether the B merits of an appeal is a relevant consideration. Mr CC Liew, counsel for the plaintiffs, had argued that it is irrelevant and referred to *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* [1989] 3 MLJ 40, a decision of NH Chan J, where it was held that merits and strong ground for an appeal and the validity or correctness of the decision appealed from are not special circumstances and reliance was placed on *Sykt Berpakat v* C *Lim Kai Kok* [1983] 1 MLJ 406 (a decision of Hashim Yeop A Sani J, which latter case adverted to *Serangoon Garden Estate Ltd v Ang Keng* [1953] 1 MLJ 116. I will first refer to *Serangoon Garden Estate Ltd v Ang Keng* where it is said:

D But it is a clear principle that the court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it. The only ground, so far as appears in the written grounds for granting this stay, is that if the defendant succeeded in his appeal he could not be restored to the same position as before because the plaintiffs would have removed his pig-sty. That ground, standing alone, in my opinion cannot be a sufficient ground E on which to grant a stay of execution. It seems to me that to hold otherwise would be to establish a precedent, and in effect to lay down a rule of practice, that in all cases where the defendant cannot be restored to his original position if his appeal succeeds, a successful litigant is to be deprived of the fruits of his litigation until such time as the appeal is determined. Such a ground might well be an important factor to take into consideration F if there were other grounds. *If, for example, another ground had been that there were merits in the appeal, that fact coupled with the fact that the defendant, if successful, could not be restored to his original position might well have afforded special circumstances* to justify the learned district judge in exercising his discretion to grant a stay; and I should not have thought it right to interfere. (Emphasis added.)

G It is clear that *Serangoon Garden Estate Ltd v Ang Keng* was of the view that the merits in the appeal is a relevant consideration in determining whether they are special circumstances. As was said earlier, this case was referred to in *Sykt Berpakat v Lim Kai Kok* but *Sykt Berpakat v Lim Kai Kok* obviously did not agree with the proposition that the merits of an appeal H is a relevant consideration, despite saying the case lays down the general principles regarding a stay of execution because Hashim Yeop A Sani J went on to state, after citing *Monk v Bartram* [1891] 1 QB 346, that 'allegations that there has been misdirection or that the verdict or judgment was against the weight of evidence, or that there was no evidence to support the verdict or judgment are not special circumstances' and thus I the learned judge was of the opinion that merit in an appeal cannot constitute special circumstances. The learned judge never gave his reason for refusing to follow *Serangoon Garden Estate Ltd v Ang Keng* which was of the view that the merit in an appeal is a relevant consideration and,

when considered with other factors, may constitute special circumstances for a stay. Why should not the court follow *Monk v Bartram*. First, it has to be noted that *Monk v Bartram* was a case that was already tried with a jury and the verdict was given in respect of which a stay was sought and the only ground advanced for a stay was that there was a misdirection at the trial. This was what Lord Esher MR said in that case:

> Since the court has had to deal with motions for new trials, instead of their going to a Divisional Court, we have been most anxious not to change the practice which prevailed in the Divisional Court, and not to alter the rights of the parties. We have made inquirers, and find that the practice in the Divisional Court has been similar to that as to appeals in this court in cases of trials before a judge without a jury. It has never been the practice in either case to stay execution after the judge at the trial has refused to grant it, unless special circumstances are shewn to exist. It is impossible to enumerate all the matters that might be considered to constitute special circumstances; but it may certainly be said that the allegations that there has been a misdirection, that the verdict was against the weight of evidence, or that there was no evidence to support it, are not special circumstances on which the Court will grant a stay of execution. No special circumstances are brought forward in this case, the only ground for the application being, that a motion is to be made for a new trial on the ground of misdirection. The application must, therefore, be refused.

The most significant difference between *Monk v Bartram* and the present case is that in our case there was no trial at all while in that case there was a trial with a jury and this is a relevant factor and I have had the occasion in *Government of Malaysia v Datuk Hj Kadir Mohamad Mastan and another application* [1993] 3 MLJ 514, to following VC George J in *Hong Leong Finance Bhd v Hon Hoi Weng & Ors* [1987] 2 MLJ 377, so say. I am of the view that *Monk v Bartram* never decided that the merit of the appeal cannot be a relevant consideration but the case merely decides that the merit of an appeal is, by itself, not enough to constitute special circumstances. If the merit or demerit of an appeal is not a relevant consideration, you may find that a party may be successful in establishing special circumstances and thus obtain a stay when his appeal is devoid of merits; such a result is surely undesirable and surely is not what society approved of. It is not insignificant that in *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1976] 1 MLJ 131 at p 132, the Federal Court there speaks in these terms, viz:

> However, an allegation on an appeal that there has been misdirection at the trial would not be sufficient to bring it within the special circumstances: *Monk v Bartram.*

Similarly, the case of *Lee Kuan Yew v Jeyaretnam JB* [1991] 1 MLJ 83, at p 85, also speaks in a similar vein, viz 'However, the fact that there may be strong grounds for an appeal is not by itself a reason for granting a stay'.

Both these cases talk about insufficiency rather that it being totally irrelevant, the merit of an appeal being a factor bringing it within the meaning of special circumstances. Hence, I am of the view that the merit of an appeal though on its own may not be sufficient to constitute special

A circumstances, may be taken into consideration with other factors for the purpose of determining whether there are special circumstances. I would respectfully, for the reasons I have given, differ in so far as *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* [1989] 3 MLJ 40 were to decide that the merit of an appeal is under no event to be a relevant consideration. I am not unaware that a judge may be placed in a position B of having to review his decision which is appealed against or having that decision being reviewed by another judge of co-ordinate jurisdiction. I do not think this should pose any problem as the finding of merit is only a finding prima facie. After all, judges have been giving leave to appeal against their decisions. I will proceed to consider whether there is any C merit in the appeal against the order striking out the defendants' counterclaim and, if there is merit, whether there are factors that would constitute special circumstances. I will deal first with the other factors.

Whether there are special circumstances

D The defendants maintain that any execution would disrupt their business and that of their joint venture company since, according to the defendants, the seizure would bring the operation of their factory to a stop. How the execution of a judgment will have that effect had not been explained. It is left to the court to see whether all or any of the methods of execution will have the effect which the defendants alleged. I will first consider the effect E of a writ of seizure and sale which affects movable properties. Since the trade of the defendants revolves primarily around timber and the processing of timber, it is to be expected that whatever logs and machinery belonging to the defendants may be seized in execution. Unfortunately, no details have been provided as to the cost of the machinery nor as to the volume F and cost of timber that may be expected at any day to be in the factory against which the seizure may be directed at. If the logs alone that are available for seizure have a market value of, say, RM10m, a seizure would not have the effect of disrupting the business of the defendants because the plaintiffs are not entitled to seize more than what is reasonably sufficient or else the plaintiffs shall be liable to the defendants for damages for G excessive levy. The law is stated by *Clerk & Lindsell on Torts* (16th Ed) at para 27–72, in this way:

> *How much should be seized.* The duty of those who levy execution is confined to seizing goods reasonably sufficient, when they are sold, to satisfy the relevant indebtedness of the judgment creditor. Therefore a seizure that is H excessive, even though it is not malicious, gives rise to liability in respect of any damage caused to the debtor. If malice is proved there may be a claim for exemplary damages ...

That means the defendants would still have a lot of logs to process and thus continue with its operation even if there is a seizure and sale since I such seizure and sale is limited to what is reasonably sufficient to satisfy the judgment debt of more than RM1.7m. The same can also be said in the case of the machinery. The alleged disruption in the business of the defendants can only hold true if it is shown to the court that the value of the stock of logs and machinery available for seizure does not exceed very

much the value of, say RM2m, which would mean that the plaintiffs are entitled to seize all there is in the factory of the defendants and thus bring to a halt the operation of the business of the defendants and its joint venture company. As I have said earlier, no such evidence was forthcoming with the result that the court cannot say whether a writ of seizure and sale will have the result of bringing to a halt the operations of the defendants and its joint venture company. Another form of execution is by the seizure of lands through lodging a prohibitory order. Again, no evidence is forthcoming as regards what lands the defendants have which seizure may disrupt their business. Yet another form of execution is the appointment of a receiver for the purpose of equitable execution but this manner of execution does not disrupt the business of the defendants. All in all, the defendants had not come forth with enough evidence for the court to act upon. Therefore, a case has not been made out that their operations would be disrupted if execution is not stayed.

The next argument advanced by Mr Raymond Szetu, counsel for the defendants, was that the defendants' counterclaim far exceeded that of the judgment debt and that a stay had in fact already been granted but the stay had, according to the parties, been automatically lifted as a result of the striking out of the defendants' counterclaim for want of prosecution. Mr CC Liew argued that it is no longer of relevance not only because there was no longer any counterclaim but also because it is immaterial that the appeal has merit which latter contention I have already dealt with. Since Mr CC Liew did not argue otherwise, I take it that there is substance that the defendants' counterclaim could be in the region of about RM3.1m which far exceeds that of the judgment debt of RM1,718,731.65. Since this must have been the factor that influenced the learned judge who granted the stay of execution in the first place, the factor still pertains if there is merit in the defendants' appeal against the striking out order. Since Mr CC Liew rested his argument on the proposition that the court cannot take into account the merit of the appeal and did not argue that the appeal has no merit and since I have, contrary to what Mr CC Liew had submitted, ruled that the merit of an appeal is a relevant factor, it has to be concluded that Mr CC Liew had conceded that there was merit in the appeal. Since there was merit in the appeal, the counterclaim far exceeds that of the plaintiffs' claim and the defendants' counterclaim was struck out without a trial, I order that execution of the judgment be stayed until after the hearing of the appeal against the decision striking out the counterclaim by the Court of Appeal and the stay is to continue if the Court of Appeal shall allow the appeal. Cost to the defendants.

I have just gone through the calendar of this court and I find that any case that is entered for trial now can be heard in August 1995 which means the stay will only last till that time if ever there is going to be a trial.

Application allowed.

Reported by Kevin Ooi